

Appl. No. : 10/041,688  
Filed : January 7, 2002

### **REMARKS**

Claims 1-6, 8-18, and 20-34 are pending in this application. Claims 1-3, 8, 9, 12-15, 20, and 21 have been amended. Claims 7 and 19 have been cancelled. New claims 25-34 have been added. Support for the amendments and new claims is found in the specification and claims as filed.

#### **Specification**

The specification has been amended to capitalize all trademarks referred to therein.

#### **Drawings**

The drawings have been amended to substitute black and white photographs for color photographs previously submitted. Accordingly, Applicants respectfully request entry of the amendment to the drawings.

#### **Claim Objections**

Claims 2, 3, 14, and 15 have been objected to as being of improper dependent form. These claims have been amended to recite "cyanoacrylate." Accordingly, Applicants respectfully request withdrawal of the objection.

#### **Claim Rejections - 35 U.S.C. § 112, first paragraph and second paragraph**

Claims 2, 3, 14, and 15 have been rejected under 35 U.S.C. §112, first paragraph and second paragraph. These claims have been amended to recite "cyanoacrylate."

Claim 12 has been rejected under 35 U.S.C. §112, second paragraph as unclear as to the phrase "approximating the wound." The term "approximating" as employed within the medical community is defined as "the act or process of bringing closer together or into apposition." See Dorland's Illustrated Medical Dictionary, Copyright 2002 W. B. Saunders. One skilled in the medical arts would understand the phrase "approximating the wound" to describe bringing the edges of the wound closer together or into apposition.

Accordingly, Applicants respectfully request withdrawal of the objection.

#### **Claim Rejections - 35 U.S.C. § 102(b)**

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Claims 1, 4, 5, 7-9, 12, 16, 17, and 19-21 have been rejected under 35 U.S.C. §102(b) as anticipated by WO91/10374 (hereinafter “the ‘374 application”). “A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference.” *See, e.g., In re Paulsen*, 31 USPQ2d 1671 (Fed. Cir. 1994). WO91/10374 does not disclose every element of Applicants’ claims, and therefore cannot be considered as an anticipating reference under 35 U.S.C. § 102(b).

The pending independent claims recite, *inter alia*, an adhesive comprising “a cyanoacrylate, a microencapsulated therapeutic agent, and a water soluble defect forming agent.” The ‘374 application discloses biomedical implants comprising a matrix and a biodegradable porosifying agent. The ‘374 application does not, however, disclose an adhesive comprising a microencapsulated therapeutic agent in combination with a cyanoacrylate and a water soluble defect forming agent.

Accordingly, Applicants respectfully request that the rejection be withdrawn.

#### **Claim Rejections - 35 U.S.C. § 103(a)**

Claim 13 has been rejected under 35 U.S.C. §103(a) as obvious over the ‘374 application. To articulate a *prima facie* case of obviousness under 35 U.S.C. §103(a), the PTO must, *inter alia*, cite prior art that teaches or suggests all the claimed limitations. *In re Royka*, 490 F.2d 981 (C.C.P.A. 1974).

As discussed above in regard to the anticipation rejection, the pending independent claims recite a clip adapted to “a cyanoacrylate, a microencapsulated therapeutic agent, and a water soluble defect forming agent.” Also as discussed above, the ‘374 application does not disclose an adhesive comprising a microencapsulated therapeutic agent in combination with a cyanoacrylate and a water soluble defect forming agent.

The ‘374 application does not disclose all limitations of the claimed invention. Accordingly, Applicants respectfully request that the rejection be withdrawn.

#### **Claim Rejections - 35 U.S.C. § 103(a)**

Claims 2, 3, 14, and 15 have been rejected under 35 U.S.C. §103(a) as obvious over WO91/10374 in view of US 5,811,091 (hereinafter “the ‘091 patent”).

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As discussed above, WO91/10374 does not disclose an adhesive comprising a microencapsulated therapeutic agent in combination with a cyanoacrylate and a water soluble defect forming agent. The '091 patent discloses cyanoacrylate adhesives comprising an antimicrobial agent, but does not disclose an adhesive comprising a microencapsulated therapeutic agent in combination with a cyanoacrylate and a water soluble defect forming agent.

The '374 application and the '091 patent, either alone or in combination, do not disclose all limitations of the claimed invention. Accordingly, Applicants respectfully request that the rejection be withdrawn.

**Claim Rejections - 35 U.S.C. § 103(a)**

Claims 2, 3, 10, 11, 14, 15, and 22-24 have been rejected under 35 U.S.C. §103(a) as obvious over the '374 application in view of WO96/00760 (hereinafter "the '760 application").

As discussed above, the '374 application does not disclose an adhesive comprising a microencapsulated therapeutic agent in combination with a cyanoacrylate and a water soluble defect forming agent. The '760 application discloses biomedical adhesives comprising a biocompatible pH modifier (e.g., a microencapsulated pH modifier), but does not disclose an adhesive comprising a microencapsulated therapeutic agent in combination with a cyanoacrylate and a water soluble defect forming agent.

Accordingly, the '374 application and the '760 application, either alone or in combination, do not disclose all limitations of the claimed invention. Accordingly, Applicants respectfully request that the rejection be withdrawn.

**Claim Rejections - 35 U.S.C. § 103(a)**

Claims 6 and 18 have been rejected under 35 U.S.C. §103(a) as obvious over the '374 application in view of WO99/20685 (hereinafter "the '685 application").

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As discussed above, the '374 application does not disclose an adhesive comprising a microencapsulated therapeutic agent in combination with a cyanoacrylate and a water soluble defect forming agent. The '685 application discloses coating formulations for sustained-release drug implants that include pore forming agents, but does not disclose an adhesive comprising a microencapsulated therapeutic agent in combination with a cyanoacrylate and a water soluble defect forming agent.

Accordingly, the '374 application and the '685 application, either alone or in combination, do not disclose all limitations of the claimed invention. Accordingly, Applicants respectfully request that the rejection be withdrawn.

### Conclusion

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance. Should the Examiner have any remaining concerns that might prevent the prompt allowance of the application, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: \_\_\_\_\_

8/29/03

By: \_\_\_\_\_



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